

Kendrick Moxon [SBN 128240]
LAW OFFICE OF KENDRICK
MOXON, P.C.
3500 W. Olive Ave., Suite 300
Burbank, California 91505
Telephone: (818) 827-7104
Facsimile: (818) 827-7114
kmoxon@kmoxonlaw.com

Attorneys for Plaintiff
CITIZENS COMMISSION ON
HUMAN RIGHTS

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CITIZENS COMMISSION)	Case No. 2:18-cv-5320
ON HUMAN RIGHTS)	
)	COMPLAINT FOR
Plaintiff,)	INJUNCTIVE RELIEF
)	
v.)	
)	
UNITED STATES FOOD AND)	
DRUG ADMINISTRATION)	
)	
Defendant.)	
_____)	

I. INTRODUCTION AND JURISDICTION

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552, by the Citizens Commission on Human Rights (“CCHR” or “Plaintiff”) to order the production of agency records concerning communications between the Food and Drug Administration (“FDA” or “Defendant”) and MECTA Corporation – a manufacturer of electroconvulsive therapy (shock treatment) devices. The FDA has improperly withheld from Plaintiff all records requested, in violation of the Freedom of Information Act.

1 communications, so I have not limited the request to categories which I
2 know.”

3 8. Ms. Lewis responded on June 14, 2017, stating: “As your request is reaching
4 the top of the queue, we reach out to make sure the information is still needed before
5 we begin processing the request. Your request has not reached the top of the queue as
6 of yet. However, I anticipate the search will begin with the next 2 to 4 weeks.” No
7 assertion was made by CDRH that this simple Request was in any way complicated or
8 “complex.” Rather, Ms. Lewis stated the search would begin in 2-4 weeks (i.e.,
9 between June 29, 2017 and July 12, 2017 because, the FOIA Request “is reaching the
10 top of the queue.”)

11 9. On July 11, 2017, CCHR queried the progress of the processing of the
12 Request. Ms. Lewis then represented that her June 14, 2017 estimate was accurate -
13 that the processing would begin in 2-4 weeks (from June 14, 2017).

14 10. However, on July 24, 2017, Ms. Lewis stated: “Your request has begun
15 processing. In order to obtain the records being sought my office has to reach out to
16 other component offices with CDRH to conduct the search. The search has not been
17 completed at this time. I estimate that your request will be closed within 4 to 8 weeks.

18 11. On August 14, 2017, in response to a further request for an update, Ms.
19 Lewis provided further assurances that the processing of the FOIA Request was
20 proceeding, stating: “The time frame I recently provided you is still accurate (4 to 8
21 weeks). If you have any additional questions please let me know.”

22 12. On September 21, 2017, CCHR requested a further update, given that
23 CDRH had missed several represented target dates to complete the processing of the
24 Request. By email dated September 27, 2017, Ms. Lewis responded to the suggestion
25 that the FDA was intentionally delaying the request, by controverting all prior
26 representations and stating that the FDA was removing the FOIA Request from
27 processing it was allegedly undergoing, and placing it on a slower track:
28

1 “The current processing time for most requests in the complex
2 queue is 18 - 24 months. Due to the complexity of the subject matter
3 of your request (per your email clarification on 6/14/17), your request
4 has been placed in the complex queue for processing. Your request
5 requires multiple offices and locations to be searched for responsive
6 records. We are processing your request as quickly as possible. Please
7 be advised that we process requests in a first-in, first-out manner.

8 “There currently are 6 complex and voluminous requests ahead
9 of your request in my queue. As of today, the estimated completion
10 date for your request is March 31, 2018. This timing could change
11 based on when I receive all responsive records and the volume of the
12 records for my review.”

13 13. Essentially the FDA email stated that rather than completing the processing
14 it was already undergoing, as previously represented, the FDA was ceasing the
15 processing of the Request by placing the Request into a “complex” queue, behind
16 other requests which it viewed to be complex. Such a response manifests a lack of due
17 diligence at best, and worse, constitutes a transparent endeavor to delay and avoid
18 processing the Request.

19 14. Through counsel, CCHR accordingly wrote to the FDA and asked it to
20 reverse this conduct, or that it would necessarily proceed with an administrative
21 appeal. The FDA responded that such an act would cause the Request to be further
22 delayed – thus threatening that the exercise of the right to appeal would be met with
23 further delay as a punishment therefor.

24 15. No response was ever received to the FOIA Request despite the numerous
25 promised response deadlines from the FDA set forth above. Thus, by letter dated
26 January 16, 2018, plaintiff administratively appealed the denial of the Request. A
27 copy of this appeal letter is attached as Exhibit B.
28

